IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4811 OF 2006

Vinay Vasant Ghotge and another Petitioners
versus
Subhalakshmi Rajderkar & ors. Respondents

Mr.A.A.Kumbhakoni for petitioners.
Smt.Sangeeta Shrotri i/by Smt.S.S.Vaidya for respondent no.1.
Mr.Parag Shelke for respondent nos.2 and 6.

CORAM : A.P.DESHPANDE, J.
DATE : 04th December 2006

PC :

1. The present petitioner is the original defendant-tenant. The rspondent-plaintiff/land-lord had instituted a suit prior in point of time. The suit was for eviction and possession. The suit came to be dismissed. The First Appeal preferred by the landlord also met with the same fate and it also came to be dismissed. Aggrieved by the dismissal, the respondent has preferred a Writ Petition under Article 227 of the Constitution of India and the writ petition is pending before this Court. In this fact situation another suit came to be filed at later point of time by the respondent-landlord and in the suit so filed subsequently, the present

petitioner-tenant filed an application under section 10 of the Code of Civil Procedure making a prayer to stay the proceedings of the suit instituted later in point of time. The Trial Court has rejected the application by holding that there are no two suits pending and hence Section 10 has no application. The Trial Court's view is, writ petition not being continuation of a suit, pendency of the writ petition in High Court would not attract Section 10.

2. The learned counsel Shri Kumbhakoni appearing for the petitioner has placed reliance on a judgement reported in (2005)2-SCC-256 (National Institute of Mental Health and Neuro Sciences Vs. C. Parameshwara) to contend that the fundamental test to attract Section 10 of CPC is whether on final decision being reached in the previous suit, such decision should operate as res judicata for the subsequent suit. In the submission of the learned counsel, once the said test is satisfied, then whether the proceedings could be termed as suit or otherwise the later proceedings need to be stayed. It is then contended that as a decision rendered in writ petition operates as res judicata touching the issue raised before the Civil Court, similar

situation need to be obtained by interpreting Section 10 in regard to other proceedings including the writ petition. The learned counsel has also placed reliance on a decision of Supreme Court reported in AIR-1965-SC-1153 (Gulabchand Chhotalal Parikh Vs. State of Gujarat) to buttress his submission that a decision rendered in a writ petition would operate as res judicata if the same issue crops up for adjudication in a civil suit filed later in point of time.

3. Perusal of the judgement reported in AIR-1965-SC-1153 goes to hold that Section 11 of CPC which deals with res judicata is not a complete code in itself. Outside Section 11 general principles of res judicata also apply and the proposition laid down in the judgement reported in AIR-1965-SC-1153 is that even if a case is not covered by Section 11 none the less if the issue is already adjudicated by a competent Court, the same would operate as res judicata by applying the general principles of res judicata. There is no quarrel on the question that cases not squarely covered by Section 11 could still be covered under general principles of res judicata, however, this analogy cannot be extended while interpreting Section 10

of CPC. The subsequent suit needs to be stayed only in the event if the criteria laid down in Section 10 is fully satisfied and not otherwise. There are no general principles dealing with stay of suits beyond Section 10 as is the case in the contra- distinction to Section 11. Perusal of the judgement reported in 2005 referred to hereinabove the Supreme Court is referring to the fundamental test for attracting Section 10 is in relation to suits. I do not find any error committed by the Trial Court when it concludes that a writ petition is not continuance of a suit and hence pending a writ petition subsequently instituted suit cannot be stayed. There being no merit in the writ petition, the writ petition is summarily rejected.

4. Learned counsel for petitioner at this stage prays for stay of the suit for a period of three weeks to enable the petitioner to approach the Apex Court. The said prayer is opposed by learned counsel for the respondent by pointing out that the suit is fixed for cross examination tomorrow. Prayer for stay of the proceedings of the suit for three weeks is granted. It is made clear that this order shall not be extended after a period of three week.

(A.P.DESHPANDE, J.)